No. 89-949

In The

# Supreme Court of the United States

October Term, 1989

AMERICAN HOME INSURANCE GROUP, A DIVISION OF NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA, et al,

*Petitioners*

and

LAKE CHARLES STEVEDORES, INC.

*Petitioners*

versus

BERNADETTE AARON, et al,

*Respondent*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

(1). Was the United States Fifth Circuit Court of Appeals correct in remanding the case in question to Louisiana State District Court?

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## SUMMARY OF THE ARGUMENT

This is a case in which the plaintiffs' original petition sought damages as a result of the wrongful death of Wash Aaron. The plaintiffs sought damages from the Lake Charles Stevedores based upon the Louisiana Workmen's Compensation Act provisions for intentional injury. The petition clearly identified the claim as one in tort.

The defendants sought removal of the case based upon the defense that the claim should be governed by the exclusivity of the provisions of the Longshoreman's Harbor Worker's Compensation Act (LHWCA). Appellees maintain that the defense of the exclusivity of the Act is insufficient to create original jurisdiction in the Federal Court. Plaintiffs' original complaint should be the sole basis for federal jurisdiction or the lack thereof.

Under the "well-pleaded complaint rule" the original petition is the sole test as to whether the claim creates a federal question of jurisdiction. In the present case no federal question was raised by the original petition and insomuch as the petition did not invoke any federal question, the removal was improper and the remand ordered by the Fifth Circuit Court of Appeals should be affirmed.

## STATEMENT OF THE CASE

A petition for damages resulting from a wrongful death was filed in Louisiana 14th Judicial District Court based upon a claim by the surviving spouse and surviving children of a deceased longshoreman.

Plaintiffs-Appellees elected to seek recovery under the provisions of the Louisiana Workman's Compensation Act, Section 1032, and Louisiana Civil Code Article 2315. All of the plaintiffs in the original petition were domiciled in the State of Louisiana and the defendants, except for Caterpillar, Inc. and the various foreign insurers, were domiciled within the State of Louisiana.

The defendant, American Home Insurance Groups, A Division of National Union Fire Insurance Company, and the Lake Charles Stevedores, Inc., successfully removed the plaintiffs' cause of action to the Western District Court of the State of Louisiana, basing its request for removal on the exclusivity of the Longshore and Harbor Worker's Act. In addition, the same defendants sought to be dismissed from the cause of action based upon the immunity provided under the LHWCA. The U. S. Magistrate for the Western District in Lake Charles, ruled that the removal was proper and dismissed the plaintiffs' cause of action as it pertained to the Lake Charles Stevedores, Inc. and American Home Insurance Groups, A Division of National Union Fire Insurance Company.

The United States District Court Judge for the Western District of the State of Louisiana ruled that the findings and recommendations of the Federal Magistrate were proper, denying the plaintiffs' Motion for Remand and affirming the Magistrate's dismissal of the cause of action.

The United States Court of Appeal for the Fifth Circuit reversed the District Court's removal of the case from the 14th Judicial District Court and ordered the matter remanded. The plaintiffs-appellees come before

this Court in opposition to the defendant-appellant's application for Writ of Certiorari.

## ARGUMENT

In the present case, the surviving spouse and heirs of Wash Aaron filed a state court claim. They alleged in particular, intentional and negligent tortuous conduct on the part of three defendants, including the appellant. The petition did not mention the Longshore and Harbor Workers' Compensation Act (LHWCA) or any other federal claim. However, the defendants were successful in removing this case on the grounds that their defense to the claim arose under the exclusivity of the act. It is appellees' position that the district court improperly removed the state court action because the original petition was one which could not have been filed in federal court. Since there was no diversity jurisdiction, a federal question had to have been present in order for the removal to be proper. *Caterpillar v. Williams*, 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed. 2d 318 (1987).

The long-recognized "well-pleaded complaint" rule provides that it is the plaintiff's petition which governs the determination of jurisdiction. It is well established that if the petition contains no issue of federal law, there is no federal question, and the district court does not have jurisdiction over the matter. *Franchise Tax Board v. Laborer's Vacation Trust*, 463 U.S. 23, 103 S.Ct. 2841, 27 L.Ed. 2d 420 (1983). Even if a federal defense, such as the exclusivity of the LHWCA, is raised by the defendant, there is no creation of federal question jurisdiction. See

*Powers v. South Central United Food & Commercial Workers Union*, 719 F.2d 760, 764 (5th Cir. 1983).

Appellants now argue that the removal of plaintiffs' claim was proper insomuch as this case arises under an exception to the well-pleaded complaint rule. Appellants argue that the petitioners filed their claim in bad faith; that is, their petition raised a state court claim merely to conceal the fact that their claim was truly federal. Appellees disagree. There is no federal cause of action which the appellees seek. Because there was no diversity, the plaintiffs' petition could not have been brought in federal court based upon any cause of action sought by the plaintiffs. There can be no concealment of a federal cause of action when no federal cause of action exists.

In addition, appellants have argued that the LHWCA is so preemptive as to fall within the (*Avco* exception), *Avco v. Aero Lodge No. 735*, 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed. 2d 126 (1968). That notwithstanding, appellants do not argue that the LHWCA contains civil enforcement provisions similar to the enforcement provisions provided in the *Avco* case. In *Avco*, the court was faced with what was clearly preemptive language in Section 301 of the LMRA. Appellees argue that there is no specific federal cause of action set forth in the LHWCA that would be available to the plaintiffs in the present case, such as was available to the plaintiffs in *Avco*. Appellees aver that the Appellate Court was correct in finding that the LHWCA contained no specific jurisdictional grant similar to that found in *Avco*. *Aaron v. National Union Fire Ins. Co. of Pittsburgh*, 867 F.2d 1157 (5th Cir. 1989).

Furthermore, though the Fifth Circuit did not see fit to make such a finding, it is still the position of the Appellees that the jurisprudential history of the LHWCA is indicative of a move away from the type of preemption that is made part of the LMRA. Since the adoption of the LHWCA, the exclusivity provisions of Section 905 have been broadened such that there have been numerous exceptions to that exclusivity. It is Appellees position that if the Congressional intent was to preempt all state action as it concerns injuries to maritime workers injured in holds of vessels while located in port on navigable water, the act could have easily been amended to include the specific language found in the LMRA.

Finally, the Fifth Circuit Court of Appeals has now decided for a second time that the defense of the preemptive nature of the LHWCA, when asserted as a defense to a State Court claim, should not overcome the well-pleaded complaint rule. *Lowe v. Ingalls Shipbuilding*, 723 F.2d 1173 (5th Cir. 1985) and *Aaron v. National Union Fire Ins. Co. of Pittsburgh*, 867 F.2d 1157 at 1166. In both cases, the plaintiffs originally sought relief under State Court causes of action and the defendants obtained removal based upon the exclusivity and preemptive nature of the LHWCA. The Appellees maintain that the application of the well-pleaded complaint rule and the holding that the LHWCA could not be asserted as a defense for the purpose of removal were correct. Appellees respectfully argue that the Fifth Circuit properly remanded Appellees' case to Louisiana State District Court based upon the well-pleaded complaint rule and the failure of the present case to fall within the *Avco* exception.

## CONCLUSION

Appellees respectfully urge that the Fifth Circuit Court of Appeals was correct in remanding this matter to State District Court for trial on the merits. We respectfully request that the Writ of Certiorari be denied.

Respectfully submitted,

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